IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Crl. Revision No.570 of 1997

Date of decision : December 7, 2006.

Gurtej Singh and another

... Petitioners

versus

State of Punjab

... Respondent

Coram : Hon'ble Mr. Justice A.N. Jindal

Present : Mr. Gaurav Chopra, Advocate
for the petitioners.

Mr. K.S. Boparai, Additional A.G. Punjab
for the respondent.

Mr. A.P.S. Deol, Advocate
for the complainant.

A.N. Jindal, J.

Legality of the judgment dated June 13, 1997 passed by the Sessions Judge, Bathinda confirming the judgment of conviction and sentence passed by Sub Divisional Judicial Magistrate, Phul, has been challenged vide which accused Gurtej Singh and his wife Kello were convicted under Sections 326/34, 324, 324/34, 323, 323/34 IPC and were sentenced as under :-

Gurtej Singh & Kello

U/s 326/34 IPC : To undergo rigorous imprisonment for two years and to pay fine of Rs.2000/- each. In default of payment of fine to further undergo simple imprisonment for one month each.

Gurtej Singh

U/s 324 IPC : To undergo rigorous imprisonment for six months and to pay fine of Rs.700/-. In default of payment of fine to further undergo simple imprisonment for 15 days.

U/s 323/34 IPC : To undergo rigorous imprisonment for 3 months and to pay fine of Rs.300/-. In default of payment of fine to further undergo simple imprisonment for seven days.

Kello

U/s 324/34 IPC : To undergo rigorous imprisonment for six months and to pay fine of Rs.700/-. In default of payment of fine to further undergo simple imprisonment for 15 days.

U/s 323 IPC : To undergo rigorous imprisonment for 3 months and to pay fine of Rs.300/-. In default of payment of fine to further undergo simple imprisonment for seven days.

However, all the substances sentences were ordered to run concurrently.

Briefly stated, the facts of the case necessary for disposal of this revision are that Gurtej Singh along with his wife Kello and children has been residing in the house adjoining to the house of Makhan Singh in the fields. Their third brother Mukhtiar Singh was residing in the house of Makhan Singh.

On September 12, 1989, at about 5.30 PM, Gurtej Singh petitioner armed with Kassia, his son Binder Singh (Juvenile) armed with Kahi and wife Kello armed with Datri came out and asked Mukhtiar Singh to vacate the house of Makhan Singh as he had nothing to do with the same, to which Mukhtiar Singh replied that he would not vacate the house until and unless partition is effected. Gurtej Singh inflicted Kassia blow on the left side of his (Mukhtiar Singh's) head. Accused Kello exhorted and instigated her son Binder Singh to teach a lesson to Mukhtiar Singh for demanding partition. At this Binder Singh inflicted Kahi blow on his right leg. Accused Kello also inflicted Datri blows on his left forearm and left shoulder. Hue and cry raised by Mukhtiar Singh attracted his wife Angrej Kaur. Consequently, accused fled away with their respective weapons. Mukhtiar Singh was rushed to the Civil Hospital, Rampura Phul, where he was medico-legally examined. On receipt of the ruqa regarding admission of Mukhtiar Singh in the hospital, ASI Jarnail Singh reached there and recorded his statement, on the basis of which a case was registered against the petitioners which was followed by the investigation and arrest of the accused. After completion of the investigation challan against the accused was presented in the Court.

On finding a prima facie case, charge under Sections 326/324/323 read with Section 34 IPC was framed against the accused to which they pleaded not guilty and claimed trial.

Since Binder Singh was a juvenile, therefore, his case was segregated from trial and sent to the Court of Principal Magistrate, Juvenile Justice Court, Bathinda for trial.

The prosecution in a bid to prove the charge against the accused examined Mukhtiar Singh (PW1), ASI Karnail Singh (PW2), Dr. Satpal Gupta (PW3) and Angrej Kaur (PW4).

Thereafter, the accused were examined under Section 313 of Cr.P.C. in which they denied all the incriminating circumstances appearing against them. While pleading their innocence and false implication, they further submitted that injuries were caused to Mukhtiar Singh by Binder Singh in exercise of his self defence. In defence, the accused furnished copies of Khasra girdawaries and judgment of the Juvenile Court dated January 5, 1991 and judgment of the Court of Additional District Judge, Bathinda dated April 27, 1989.

While accepting the prosecution evidence and rejecting the defence plea, Sub Divisional Judicial Magistrate, Phul convicted the accused under Sections 326, 326/34, 324, 324/34, 323, 323/34 IPC and sentenced them accordingly.

Appeal against the aforesaid judgment preferred by the accused also resulted into dismissal. Hence this revision petition.

I have heard Mr. Gaurav Chopra, learned counsel for the petitioners, Mr. K.S.Boparai, Additional Advocate General, Punjab and perused the records of this case very carefully.

The first plank of argument advanced by the learned counsel for the petitioners is that there is an inordinate delay in lodging the FIR. The occurrence took place on September 12, 1989 at 5.30 PM, whereas the FIR was recorded after the delay of 19 hours i.e. on 13th September 1989 at 12.15 PM for which the prosecution has not put forward

any reasonable explanation so as to explain the aforesaid delay.

I have perused the records of this case. The aforesaid argument will not weigh with me. It is not the case where the prosecution has not been able to explain the delay in registration of the case. The records reveal that Mukhtiar Singh was admitted in the hospital just within three hours of the occurrence. On account of head injury suffered by him, he was unfit to make the statement. It took sometime for recording ruqa by the doctor and sending the same to the police station. Some time must have been consumed by the Investigating Officer to reach Rampura. He must have taken some time to seek opinion from the doctor. Thus, after excluding time as is usually consumed in the natural course in covering the distance and completing the formalities, possibility of any embellishment, confabulation or consultation at the part on the injured can be ruled out specially in view of the fact that the accused admitted the occurrence but took the plea of private defence. In any case, delay in lodging the FIR cannot be the sole ground to reject the prosecution version as a whole but when version as set up by the prosecution stands strengthened from the substantive statements of the witnesses, then delay in lodging the FIR looses significance. Here in this case, the prosecution version has been duly supported by Mukhtiar Singh (PW1) injured-eye witness. He has withstood the test of cross examination in all material aspects of the case. Besides him, Angrej Kaur (PW4) who is an eye witness has fully corroborated the version of Mukhtiar Singh (PW1). On comparative study of these two witnesses, it will not be inappropriate to draw the conclusion that the witnesses have withstood the test of cross examination and no such material

could be elicited from their testimonies (despite scorching cross-examination) which could be treated as sufficient to falsify and shake their credibility and trustworthiness. The matter does not end here. Their testimonies also attract support from Dr. Satpal Gupta (PW3) who medico-legally examined Mukhtiar Singh complainant and found following injuries on his person :-

> "1. An incised wound 11 cms x 5 cms joint cavity deep on the front of right knee joint. Patella bone was cut vertically. Articular surface of the lower end of femur was normal. Joint vacity was filled with blood. Fresh bleeding was coming out of the wound.
>
> 2. An incised wound 5 cms x 0.3 cm elliptical in shape. Bone deep on left parietal region of the skull. 11 cms above the pinna of left ear. Obliquely placed. Fresh bleeding was present. X-ray skull was advised.
>
> 3. A lacerated wound serrated in character 7 cms x 0.4 cm into skin deep on the posterior lateral aspect of left upper arm. 17 cms below top of the shoulder. Fresh bleeding was present.
>
> 4. A reddish bruise 7 cms x 3 cms on the right deltoid area.
>
> 5. A liner abrasion 4 cms x 0.2 cm serrated on the left scapular region."

He further deposed that injury No.1 was grievous, injury No.2 was kept under observation, injuries No. 3 to 5 were simple in nature.

He further opined that injuries No.1 and 2 were the result of sharp edged weapon and injuries No.3 and 5 could be the result of serrated weapon like sickle and injury No.4 could be the result of blunt weapon. Thus, the medical evidence fits in with the ocular version.

Now coming to the plea with regard to the right of private defence, it may be observed that the plea is contradictory. Perusal of judgment Ex.D3 dated 5.1.1991 passed in case of Binder Singh, passed by Juvenile Court Bathinda, reveals that Binder Singh never took such plea of self-defence during his trial. It may further be added that Juvenile Court also accepted the evidence led by the prosecution and held Binder Singh guilty under Section 326 IPC.

In any case, absence of injuries on the person of accused also makes it evident that plea of right of private defence taken by the accused does not deserves to be accepted. No such evidence has been led in defence from where the plea of right of private defence, as raised by the accused, could be treated as acceptable.

Faced with the situation, learned counsel for the petitioners has urged that some leniency may be extended keeping in view the only grievous injury that too caused by the accused Gurtej Singh on non vital part of the injured-complainant Mukhtiar Singh. Having given my thoughtful consideration to this contention raised by the learned counsel for the petitioners, I find some substance in it. The family dispute regarding partition of the property resulted into quarrel wherein a member of the family was injured. Though old age of the accused has also been pleaded as one of the grounds for leniency, but the same cannot be taken note of in the

absence of any evidence. However, the Court can well take note of the fact that the occurrence in this case took place on 12.9.1989 and the accused have been facing agony of this long drawn litigation since then, therefore, some leniency deserves to be shown to them.

In the wake of the aforesaid discussion, the revision preferred by the petitioners is hereby dismissed with the modification in the impugned judgment to the extent that the sentence passed against the petitioners is reduced to one year each under Section 326/34 IPC. However, sentence of fine qua both the accused under Sections 324 and 323/34 IPC as well as sentence of imprisonment and fine qua other offences will remain intact. Copy of the judgment be sent to the trial Court for necessary implementation and taking them in custody for serving remaining part of their sentence.

December 7, 2006 **(A.N. Jindal)**
'deepak' **Judge**